IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20484 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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V.M.BHAI - Petitioner(s)
Versus
UNION OF INDIA THR' DIRECTOR GENERAL & 2 - Respondent(s)

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Appearance :
MRS MADHUBEN SHARMA for Petitioner(s) : 1,MR ANAND L SHARMA for Petitioner(s) : 1,
None for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 26/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioner V.M.Bhai was working as Constable in CISF Unit, KPT, Kandla. He and eight others were charge-sheeted for conniving with the hardened criminals and helping them for committing theft for their personal gains. After holding regular inquiry, the Inquiry Officer came to the conclusion that the charges levelled against all the delinquents were found to be true. Agreeing with the finding recorded by the Inquiry Officer in his report, the disciplinary authority imposed punishment of reduction of pay to the minimum stage in the timescale of his pay for a period of two years with further order that during the period of reduction he will not be entitled to earn increments of pay and on expiry of the period, the reduction will have the effect of postponing his future increments. The petitioner was initially satisfied with this order of punishment and did not challenge it in appeal before the higher authority. However, the higher authority i.e. Deputy Inspector General was not satisfied with the penalty, therefore, he first issued show cause notice to the petitioner and after hearing him dismissed him from service by its impugned order dated 17th April, 2006 Annexure 'H', as according to him there was procedural infirmity in the

departmental proceedings conducted against the petitioner-delinquent and the serious charge of conniving with the criminals and helping them in committing the theft for their personal gains was fully establsiehd. Therefore, they being members of the disciplined army force like CISF of Union of India cannot be retained in service as they were expected to maintain high standard of discipline and devotion to the duties entrusted to them. This order was challenged by the petitioner in appeal before the Inspector General/WS who by his order dated 15/16th August, 2006 Annexure 'J' dismissed the appeal by observing that the petitioner was given full opportunity to defend himself in the departmental inquiry and the penalty imposed by the disciplinary authority was not commensurate with the gravity of the proved misconduct, Therefore, the reviewing authority i.e. Deputy Inspector General/WZ has rightly enhanced the penalty and dismissed him from service. With the dismissal of the appeal, the petitioner and eight others were served with a joint notice dated 26th July, 2006 Annexure 'K' calling upon them to vacate the respective quarters allotted to them on or before 20th September, 2006 failing which action will be taken against them under PPA Act for eviction of their quarters,

The impugned orders at Annexures 'H' and 'K' passed by the Deputy Inspector General/WS of dismissing him from service and dismissing his appeal against the order of dismissal are challenged in this petition by the petitioner and also the impugned notice of eviction Annexure 'K'.

Learned Counsel Shri Anand Sharma for the petitioner vehemently submitted that once the disciplinary authority exercised discretion and imposed lesser punishment considering the longstanding service of about 15 years of the petitioner, then it was not open to the reviewing authority to enhance the punishment by immediately exercising his revisional powers. He submitted that penalty of dismissal is a death penalty not only for him but for his entire family. He also submitted that the charge which was found to be proved against the petitioner was that he simply connived with the criminals and helped them in committing theft for their personal gains. For such a charge one cannot be dismissed from service as it was his first misconduct. He also submitted that the appellate authority before whom the order of dismissal was challenged had also not taken into consideration this important aspect of the case. We have carefully gone through the order of penalty of

reduction passed by the disciplinary authority and the order of dismissal passed by the reviewing authority i.e. Deputy Inspector General/WS Annexure 'H' as well as the order of the appellate authority i.e. Inspector General/WS dismissing the appeal against the order of dismissal. Having carefully gone through the same, we are of the clear opinion that the disciplinary authority has not given cogent reasons for imposing lesser punishment. Longstanding service of 15 to 16 years is no ground to impose lesser punishment when such type of serious misconduct is found to be proved against the delinquent. It is their duty to protect the lives and stocks of the people. As a Constable in the disciplined force like CISF, they were required to maintain a high standard of discipline and devotion, instead they indulged in a very serious and shameful act of conniving with the hardened criminals and helping them in committing theft for their personal gains. All other aspects including their longstanding service of 15 to 16 years are outweighed with such type of serious misconduct. Once the disciplinary authority comes to the conclusion that such a serious charge is proved, then it had no option but to pass maximum penalty of dismissal from service. Unfortunately, on extraneous consideration the disciplinary

authority took lenient view of the matter, and therefore, the revisional authority immediately took up the matter in review and after issuing show cause notice to the petitioners and others and rightly enhanced the penalty and dismissed them from service. When the dismissal order was challenged in appeal before the appellate authority, then the appellate authority was also of the considered opinion that the penalty of dismissal was the only penalty which could have been imposed and it was rightly imposed by the reviewing authority. It cannot be said that the penalty was not commensurate with the gravity of the proved misconduct.

We are of the clear opinion that the disciplinary authority has wrongly exercised his discretion in favour of the petitioner by imposing lesser punishment. This is a case of misplaced sympathy. Rakshak cannot be Pakshak. If the matter is not viewed seriously, then others may also follow the foot steps. In such type of cases deterrent punishment was very much needed and rightly awarded.

Once we come to the conclusion that the reviewing authority rightly passed an order of dismissal and dismissed the petitioner from service and that the appeal was rightly dismissed

by the appellate authority against the order of dismissal, then there is no question of interference by this Court against the impugned notice of eviction. Though the impugned notice was issued way back on 27th July, 2006, they have preferred to move this petition only today for urgent orders when the last date is 30th September, 2006. An attempt to stall the order by invoking false sympathy must be thwarted.

In view of the above discussion, this petition fails and is hereby summarily dismissed.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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